

ASSEMBLY BILL NO. 3359

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3359 with my recommendations for reconsideration.

This bill would prohibit an employer or an employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that states or suggests that an unemployed person will not be considered for the position. The legislation also provides that an employer who violates the bill's provisions will be subject to a civil penalty of \$5,000 for a first offense and \$10,000 for each subsequent offense, with such penalties being enforced and collected by the Commissioner of Labor and Workforce Development.

While I share the sponsors' interest in removing barriers to employment for people who are actively seeking work, I believe that the bill, as currently drafted, is vague and confusing. Accordingly, I am concerned that the bill will subject the State's already beleaguered business community to significant fines, penalties and unwarranted litigation without requiring a finding of knowing and purposeful conduct on the part of the employer. In addition, the bill's provisions may conflict with existing State laws, rules, and regulations concerning civil service promotions and appointments, and may unnecessarily prevent employers from examining their current pool of employees when seeking to fill vacancies.

Specifically, I am concerned that the bill's restrictions preventing employers from "suggesting" in a job advertisement that they will not hire an unemployed individual are too vague

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to provide employers with proper notice of their obligations under the law. The bill provides no definitions, and absolutely no guidance on what constitutes a "suggestion" triggering substantial penalties. This lack of clarity will lead to unwarranted penalties, frivolous litigation and widespread confusion for businesses.

In addition, I am also troubled by the legislation's imposition of new, significant financial penalties for New Jersey's already over-regulated business community without a specific intent standard established in the bill. Historically, New Jersey has suffered from a well-deserved reputation as an unfriendly environment for businesses of all sizes. Moreover, according to the final report of the Transition Subcommittee for the Department of Labor and Workforce Development issued on January 22, 2010, the Department has previously suffered from the perception that it has been overly punitive towards employers. Here, the severity of the penalties established in the bill are disproportionate to the offenses proscribed in the legislation. In order to address these harms, I believe that penalties should only be imposed after a determination that a violation was "knowingly or purposefully" committed, and that the penalty provisions should be adjusted to better address first-time offenses. Likewise, while I believe the intent of the sponsors was to create an administrative penalty as the sole remedy for violations of the bill's provisions, I am concerned that the legislation will unintentionally expose employers to costly, unwarranted litigation by failing to expressly provide that a new, private civil cause of action has not been created.

Additionally, I have been advised by the Chair of the Civil Service Commission that the bill's provisions likely conflict

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with existing civil service laws, rules and regulations and may subject appointing authorities to the penalties set forth in the legislation. Specifically, N.J.S.A. 11A:4-2 provides for the filling of employment vacancies under certain circumstances through promotional examinations. Since promotional lists only include current permanent civil service employees, unemployed individuals would not be eligible to apply. As such, without an explicit exemption for civil service jurisdictions, the job announcement for a promotional opportunity would run afoul of the prohibitions set forth in the bill and an appointing authority that posts the advertisement would be subject to the civil penalties established in the legislation.

Finally, I am recommending that the effective date of this legislation be delayed until the first day of the third month following enactment in order to provide the Department of Labor and Workforce Development with sufficient time to prepare for its implementation.

Accordingly, I herewith return Assembly Bill No. 3359 and recommend that it be amended as follows:

Page 2, Section 1, Line 7: Delete "No" and insert "Unless otherwise permitted by the provisions of Title 11A of the Revised Statutes or any other law, rule or regulation, no"

Page 2, Section 1, Line 8: After "shall" insert "knowingly or purposefully"

Page 2, Section 1, Line 9: After "vacancy" insert "in this State"

Page 2, Section 1, Line 10: Delete "or suggesting"

Page 2, Section 1, Line 12: Delete "or suggesting"

Page 2, Section 1, Lines 16: Delete "or suggesting"

Page 2, Section 1, Line 20: Insert "Nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing,

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in print or on the Internet, an advertisement for any job vacancy in this State that contains any provision setting forth any other qualifications for a job, as permitted by law, including, but not limited to, the holding of a current and valid professional license, or occupational registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

In addition, nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered."

After "2." Insert "a."

Delete "\$5,000" and insert "\$1,000"

After "violation" insert ", \$5,000 for the second violation"

Insert "b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this act."

Page 1, Section 2, Line 21:

Page 1, Section 2, Line 22:

Page 1, Section 2, Line 22:

Page 1, Section 2, Line 27:

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Page 1, Section 3, Line 28:

Delete "immediately" and  
insert "on the first day of  
the third month following  
enactment"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor